

BOARD OF APPEALS CASE NO. 5364	*	BEFORE THE
APPLICANT: Eric Deutsch	*	ZONING HEARING EXAMINER
REQUEST: Variance to locate a sunroom	*	OF HARFORD COUNTY
within the required rear yard setback;	*	
1024 Hazel lane, Bel Air	*	
	*	Hearing Advertised
HEARING DATE: July 30, 2003	*	Aegis: 6/27/03 & 7/2/03
	*	Record: 6/27/03 & 7/4/03

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Eric Deutsch, is requesting a variance pursuant to Section 267-36B, Table V, of the Harford County Code, to allow a sunroom with less than the required thirty-five (35) foot rear yard setback (32 foot proposed) in an R2/COS District.

The subject property is located at 1024 Hazel Lane, Bel Air, Maryland 21014, in the Third Election District, and is more particularly identified on Tax Map 49, Grid 4B, Parcel 383, Lot 31. The parcel contains 7,710 square feet more or less.

The Applicant, Eric Deutsch, appeared, and testified that he is the owner of the subject property. He also stated that he had read the Department of Planning and Zoning's Staff Report, and that he had no changes or corrections to that information contained therein. According to the witness, his home was placed 2 to 3 feet behind the front setback line by the builder and it, therefore, extends further into the rear yard than any of the homes constructed on neighboring properties. The subject parcel is improved by a single-family home with an attached two-car garage and a concrete driveway. The right rear corner of the dwelling has an existing block and concrete stairway, which provides access to the basement of the home. The Applicant proposes to build a 12 foot by 24 foot sunroom, which would extend 3 feet into the required 35 foot rear yard setback. He indicated that he would like to use the existing poured concrete wall of the basement entrance steps as one of the three foundation walls for the addition.

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The witness then testified regarding the site plan incorporated as Attachment 3 to the Department of Planning and Zoning's Staff Report. According to Mr. Deutsch, his property is designated as Lot 31 on that site plan. The existing dwelling is located in the center of the lot. The proposed sunroom will be located behind the home, and will be attached to its rear wall. The setbacks for the proposed sunroom are also shown on the site plan. The distance between the outside wall of the sunroom and the rear property line will be 32 feet if the requested variance is granted. This would result in a 3 foot encroachment into the rear yard setback.

The Applicant next testified regarding the subdivision plat incorporated as Attachment 7 to the Department of Planning and Zoning's Staff Report. He indicated that, as shown on the plat, there is an area of open space located between his rear property line and Tollgate Road. This space is actually a 15 foot high berm, which divides lots in the West Gate Subdivision from Tollgate Road. The berm is planted with many trees which screen Applicant's rear yard from Tollgate Road.

Mr. Deutsch also described several photographs designated as Attachment 8 to the Department of Planning and Zoning's Staff Report. According to the witness, the second photograph on the first page shows the home adjacent to Applicant's property, and its placement several feet in front of his home. The third photograph on the second page shows a partially constructed sunroom on the rear of Applicant's property. Mr. Deutsch testified that he originally began construction of the proposed sunroom without a permit. Upon applying for a permit, he had to halt construction upon learning that the proposed structure would encroach into the rear yard setback. The top photograph on the second page depicts the existing concrete wall, which Applicant wishes to use as one of the foundation walls for the proposed sunroom. The third photograph on second page shows a view of the Applicant's rear yard, taken from the top of the berm located within the open space area behind his property. The top photograph on the third page of Attachment 8 to the Staff Report, shows a view from Applicant's rear yard looking west toward the aforesaid berm. The Applicant testified that he plans to construct the proposed sunroom, in the proposed location, so that he can take advantage of this westerly view.

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According to the witness, the granting of the requested variance will not have any adverse impact on neighboring properties. There are similar sunrooms located within his community, and the proposed sunroom is compatible with both the existing dwelling, and with other properties in the neighborhood.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Department recommended approval of the subject request in its July 17, 2003 Staff Report. He indicated that the Department found the subject property to be unique because the home was constructed 3 feet behind the front setback line, which places it further back than any other dwellings in the area. If the house had been constructed in line with adjoining homes, a variance would not have been necessary to construct the proposed sunroom.

The witness indicated that sunrooms, such as that proposed by the Applicant, are common within the West Gate neighborhood, and stated that the proposed construction will be similar in both size and shape to other sunrooms found within the community. Mr. McClune also testified that the proposed sunroom will have no adverse impact on neighboring properties because it will line up with the rear of the home located to the right of the Applicant's dwelling. In addition, the wooded berm behind the rear property line will provide screening from Tollgate Road.

No witness appeared in opposition to the requested variance.

CONCLUSION

The Applicant, Eric Deutsch, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow a sunroom less than the required thirty-five (35) foot rear yard setback (32 foot proposed) in an R2/COS District.

Harford County Code Section 267-36B, Table V: Design Requirements For Specific Usage in an R2/COS District, provides for a minimum 35 foot rear yard depth.

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Section 267-11 of the Harford County Code permits the granting of variances, stating that:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test is summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The home is constructed 3 feet behind the front yard setback, and is not in line with neighboring dwellings. If the existing home had been built in line with other homes in the neighborhood, the requested variance would not be necessary. The placement of the home on the subject lot leaves insufficient room for constructing an addition to the rear of the house. Thus, the first prong of the Cromwell test has been met.

Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unusual hardship or practical difficulty for the Applicant.

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The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because the placement of the existing dwelling on the subject property precludes the construction of a rear sunroom similar to those found within Applicant's neighborhood without the necessity of obtaining a variance. If the requested variance is not granted, the Applicant will be denied property rights commonly enjoyed by other homeowners in the West Gate subdivision.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of the Code or the public interest. There are other homes in Applicant's neighborhood with similar attached rear sunrooms. In addition, the proposed sunroom has been designed to be compatible with both the existing dwelling, and with other homes in the West Gate subdivision. There is a 15-foot tall wooded berm containing an area of open space located directly behind Applicant's rear property line, and the existing trees will screen the proposed sunroom from Tollgate Road.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

Date **SEPTEMBER 8, 2003**

Rebecca A. Bryant
Zoning Hearing Examiner